TAM LYE CHIAN

v.

SEAH HENG LYE

HIGH COURT MALAYA, PULAU PINANG
JEFFREY TAN J
[ORIGINATING SUMMONS NO: 24-211-89]
23 MAY 1998

CRIMINAL LAW: *Contempt of court - Disobeying a court order - Proof - Failure to return minor to ex-spouse as required by order - Whether disobedience proved beyond reasonable doubt - Whether disobediance premeditated*

The plaintiff and the defendant were the natural parents of one Seah Yee Sheau ('the minor'). By an order dated 11 March 1996 ('the order'), the court gave the custody and care of the minor to the plaintiff. The order also gave the defendant weekend access to the minor on condition that he return the minor to the plaintiff after every such access. On 21 November 1997 the defendant took the minor from the plaintiff, but did not return him to the latter on 24 November 1997 as required by the order. Thereafter, the defendant continued to keep the minor in breach of the order and did not return him to the plaintiff. The plaintiff made several demands in writing for the return of the minor but they were ignored by the defendant. In 1998, the plaintiff filed a motion and applied for an order to commit the defendant to prison for contempt of court, for disobeying the order. Before the court, the defendant deposed for the first time that he had made many attempts to return the minor, but could not do so as the minor was adamant on not returning to the plaintiff. The defendant also led evidence which showed that the minor had telephoned the plaintiff, her solicitors and the OCPD Butterworth, telling them that he had no desire to return to the plaintiff. The defendant in the circumstances argued that he could not therefore be guilty of contempt, since non-obedience was due to the minor's refusal to return to the plaintiff.

Held:

[1] It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The motive for disobedience is irrelevent for the purpose of establishing contempt. But the breach must be proved beyond all reasonable doubt, which in most cases means that the offender must be shown to have deliberately or wilfully disobeyed the court order.

[2] *Prima facie,* the defendant had not obeyed the order dated 11 March 1996. Despite so much said by the defendant on the minor's refusal to return to the plaintiff, the defendant had not said a word on his failure to respond to the plaintiff's written demands to return the minor to her. He had also not explained why he failed to hand over, or offer to hand over the minor to the plaintiff on 18 December 1997 when the plaintiff was in his house, if he was at all sincere in his intention to hand the minor to the plaintiff.

[2a] There is no logical reason why the defendant should have kept as a secret his "attempts" to return the minor. If those "attempts" were not an afterthought, it would be rudimentary as well as logical for him as a reasonable man, if he intended and had attempted to return the minor, to have informed the plaintiff of his attempts to return the minor. He could also inform the court of his inability to comply with the order.

[3] The fact that the defendant had not informed the plaintiff of his "attempts" to return the minor and had not invited the plaintiff to take the minor from him, at any one time during the 6 months that the minor was with him, is not consistent with any intention to return the minor to the plaintiff. The fact that he had totally ignored the plaintiff's several demands is also inconsistent with any intention to return the minor to the plaintiff. The defendant's conduct, rather, is consistent with his refusal to hand the minor to the plaintiff.

[4] The asserted fact that the defendant had attempted to return the minor, in the light of his external conduct, must be seriously doubted. The external conduct of the defendant manifested only that he was recalcitrant, and that he was unaffected by the legitimate demands of the plaintiff to return the minor to her. The defendant in other words could not be believed.

[5] The contempt here was not technical. The minor of 10 years could not have been that astute as to telephone the plaintiff's solicitors and the OCPD Butterworth without the defendant goading and prodding him. Clearly the disobedience of the order, which had been proved beyond reasonable doubt, was premeditated. The defendant is fined RM 20,000.

[Defendant guilty of contempt and sentenced accordingly.]

Case(s) referred to:

Canadian Metal Co Ltd v. Canadian Broadcasting Corpn (No. 2) [1975] 48 DLR (3rd) 641 @ 669 ***(refd)***

Hadkinson v. Hadkinson [1952] P 285 @ 288 ***(refd)***

R v. Poplar Borough Council (No. 2) [1922] 1 KB 95 2 103 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 45 r. 5

Other source(s) referred to:
Halsbury's Laws of England, 4th edn, vol 9, para 52

For the applicant - Tung Mun Yeong; Tan, Ewe & Assocs
For the respondent - Mohd Hanif Abd Rahman (Roshidah with him); M/s Zamri, Ibrahim & Co

Reported by Nik Aras

JUDGMENT

Jeffrey Tan J:

This is the plaintiff's motion (encl. 128 dated 13 May 1998) to commit the defendant to prison for contempt of court, for disobeying the order of court dated 11 March 1996.

To set the scene, the plaintiff and defendant, the natural parents of Seah Yee Sheau (minor), born on 31 July 1987, are contesting the guardianship of the minor, and the court has yet to settle that contest, for reasons that should be apparent in this grounds.

The order of 11 March 1996, of Justice T.S. Nathan, reads:

> Atas permohonan Defendan di atas yang dibuat melalui Saman Dalam Kamar bertarikh 8hb Januari 1996 [Lamp. 94] dan juga permohonan Plaintif yang dibuat melalui Saman Dalam Kamar bertarikh 19hb Januari 1996 [Lamp. 97] dan **Setelah Membaca** afidavit Seah Heng Lye yang diikrarkan pada 8hb Januari 1996 [Lamp. 93], Afidavit Tam Lye Chian yang diikrarkan pada 18hb Januari 1996 [Lamp. 96], Afidavit Seah Heng Lye yang diikrarkan pada 24hb Januari 1996 [Lamp. 98] dan afidavit Wong Poh Leng yang diikrarkan pada 24hb Januari 1996 [Lamp. 99] **Dan Setelah Mendengar** Encik Gooi Hock Seng peguam bagi pihak Defendan dan Encik Tung Mun Yeong peguam bagi pihak Plaintif
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> **Maka Adalah Diperintahkan Dan Diarahkan** bahawa perintah akses [Lamp. 55] yang diberikan oleh Mahkamah pada 18-7-1995 membenarkan Defendan dua kali seminggu akses iaitu setiap Rabu dari 8.00 malam ke 10.00 malam dan setiap Ahad dari pukul 11.00 pagi ke 2.00 petang terhadap anaknya diubah untuk membenarkan Defendan sebaliknya akses bermalam dua minggu sekali pada hari Jumaat bermula dan l5hb Mac 1996 daripada pukul 6.00 petang sehingga pukul 6.00 petang pada hari Ahad berikutnya dan juga akses pada setiap hari Rabu diubah ke pukul 7.00 malam sehingga pukul 10.00 malam dan kos menjadi kos dalam kausa.

Dan Selanjutnya Adalah Diperintahkan bahawa permohonan Plaintif bagi lampiran 97 adalah ditolak dengan kos.

There is a long and chequered history to that order dated 11 March 1996.

On 17 August 1989, upon the plaintiff's application, Edgar Joseph Jr. J. (as he then was) granted the plaintiff "temporary reasonable access to the (minor)" with overnight stay, on each Saturday, until the full disposal of encl. 1.

On 3 January 1991, Edgar Joseph Jr. J dismissed the defendant's application (encl. 6) to discharge, set aside, vary or stay the order dated 17 August 1989 and or to strike out encl. 1, and ordered, in allowing the plaintiff's application (encl. 10), that the minor be a ward of the court, that the care and custody of the minor be committed to the plaintiff who shall be his guardian. The learned judge also ordered (i) the defendant to hand the minor to the plaintiff, at 2.30 pm on each Saturday, at the Butterworth Police Station, and, (ii) the plaintiff to hand the minor to the defendant, at 3pm on each Sunday, at the same police station.

On 23 July 1993, T.S. Nathan JC (as he then was) appointed the plaintiff as the guardian of the minor, granted the plaintiff custody and control of the minor and ordered the defendant to hand the minor to the plaintiff, on 13 August 1993. On 14 September 1993, T.S. Nathan JC ordered the defendant to bring the minor to the chambers of the learned judge, on 16 September 1993, to enable the court to interview the minor. On 16 September 1993, pending the defendant's application for leave to appeal to the former Supreme Court, T.S. Nathan JC deferred hearing of encl. 41 (defendant's application for a stay of the order dated 23 July 1993) for six months, and by consent, (i) stayed for six months the order on the handing over of the minor, and, (ii) granted the plaintiff access to the minor during those six months.

On 30 March 1994, by reason of the absence of the parties, Azmel J struck out the plaintiff's application (encl. 46) to strike out or set aside the order dated 16 September 1993 and to execute the order dated 23 July 1993. On 13 July 1994, Azmel J reinstated encl. 46. On 17 August 1994, Azmel J granted encl. 46. On 17 August 1994, Azmel J granted encl. 46.

On 10 July 1995, on the *ex parte* application of the defendant, Vincent Ng J ordered the plaintiff to produce the minor at the premises of High Court 2, on 11 July 1995, so as to allow the defendant to meet with the minor. On 11 July 1995, pending the disposal of encls. 51 and 55, Vincent Ng J granted the defendant interim access to the minor. On 18 July 1995, Vincent Ng J granted the defendant access to the minor until the disposal of the defendant's appeal to the former Supreme Court. On 22 July 1995, on the defendant's

application (encl. 77), Vincent Ng J varied the order dated 23 July 1993 with the conditions that the plaintiff re-enroll the minor at SRJK (C) Jit Sin "A", Bukit Mertajam and send the minor to Han Chiang High School Old Pupils' Association for tuition classes. On 10 November 1995, on the defendant's application (encl. 87), Vincent Ng J granted the defendant additional access to the minor, for the period 28 October 1995 to 3 December 1995 and for the period 16 December 1995 to 31 December 1995.

On 6 February 1996, by consent, T.S. Nathan J permitted the defendant to spend part of that year''s Chinese New Year holidays with the minor. Finally, on 11 March 1996, on the defendant's application (encl. 94), T.S. Nathan J varied the defendant's access to the minor, to wit, to alternate weekends, beginning 15 March 1996, from Friday 6pm to Sunday 6pm and to each Wednesday, from 7pm to 10pm.

Meantime, on 19 December 1995, but conveyed to this court only on 19 June 1997, the Federal Court had (i) set aside the order dated 23 July 1993, (ii) ordered a full trial of encl. 1 to determine the legitimacy or illegitimacy of the minor and who should have custody and care of the minor, (iii) directed that witnesses be called to resolve the disputed facts (iv) ordered that an *amicus curae* be appointed by the court to represent the minor in the trial, and, (v) gave interim custody of the minor, but maintaining however the same access granted the defendant by the High Court, to the plaintiff.

However, one enduring fact, in spite of the torrent of applications to court (applications dismissed are not spelt out) and plethora of judicial orders, stands out. It is, that the plaintiff has always the legal custody and care of the minor, albeit interim, throughout the duration, thus far, of this proceedings. Both the High Court and Federal Court conferred custody and care of the minor, final in the case of the High Court and interim in the case of the Federal Court, to the plaintiff. Both courts only granted access to the defendant, an established fact that the defendant, who applied (encl. 94) to the High Court after the Federal Court had set aside the order of 23 July 1993 to vary the conditions of access to him, *ipso facto,* must have recognised. Beyond any question, the plaintiff has been legally conferred the custody and care of the minor, albeit interim, and the parties *inter se* must respect the plaintiff's right to the (interim) custody and care of the minor. Obviously, the parties *inter se* must also obey the order dated 11 March 1996, until further order.

Yet, there is the complaint, whereas there should be none, that the defendant, is detaining and keeping the minor away from the plaintiff, in defiance of the order dated 11 March 1996. Stated briefly, the plaintiff deposed, in her affidavit affirmed on 8 May 1998 supporting her motion, that the defendant, after one routine weekend access, did not yield the minor to her and that the

defendant has been detaining the minor, denying her custody and care all the while, since 24 November 1997.

The plaintiff deposed furthermore that she demanded, by her solicitors' letters dated 3 December 1997 and 15 December 1997 (see encl. 127 - exh. E) for the return of the minor, that her demands were ignored, that the defendant continues to deny her custody and control of the minor and continues to act in breach of the order dated 11 March 1996. That on 18 December 1997, at the defendant's residence (5, Lorong Bukit Kechil Satu, Bukit Mertajam), she served a sealed copy of the order of the Federal Court dated 19 December 1995 on the defendant. The minor was then in the house. Yet the defendant refused to surrender the minor to her. By letter dated 19 December 1997, her solicitors again demanded the return, by 6pm on 19 December 1997, of the minor. However, the defendant continues to detain the minor, denying her custody and control of the minor, and to act in breach of the order dated 11 March 1996. Accusing the defendant of defying and disobeying the order dated 11 March 1996 and thereby acting in contempt of court, the plaintiff appended that she believed that the actions of the defendant were in total disregard of the order dated 11 March 1996, of her right and of the due administration of justice, and that the actions of the defendant had subjected the order dated 11 March 1996 to ridicule and contempt and had undermined and scandalised the authority and integrity of the court.

In response, the defendant deposed, in his affidavit affirmed on 22 May 1998 (encl. 129), as follows. He took the minor, on 21 November 1997, for that weekend's access. However, on 24 November 1997, the day he was to return the minor to the plaintiff, the minor became hysterical, due to his (minor) refusal to return to the plaintiff, when he (defendant) informed the minor of his (defendant) intention to return him (minor) to the plaintiff. He tried but to no avail to persuade the minor to return to the plaintiff. The minor insisted that he (minor) be sent to his paternal grandmother's house. On 1 December 1997, the minor telephoned and informed the plaintiff that he (minor) would not return to the plaintiff. The minor also telephoned and informed the plaintiff's solicitors that he would not return to the plaintiff. On 4 December 1997, a police inspector called him to be at the Butterworth Police Station, where the plaintiff would also be present. During that meeting, the minor telephoned and informed the OCPD that he would not return to the plaintiff. On 28 November 1997, with a view of sending him (minor) to the plaintiff's house, he convinced the minor to follow him in his car. However, the minor became hysterical when he noticed that his car was approaching the plaintiff's house; the minor was screaming, struggling, holding onto the steering wheel and begging him not to send him to the plaintiff's house. To avoid an accident, he had to return home. On 9 December 1997, outside the courtroom of the

Penang High Court, both the plaintiff's and his solicitors persuaded him to return the minor to the plaintiff. He promised them that he would use his best endeavors to return the minor to the plaintiff. That evening, at 8pm, he got the minor into his car. However, the minor upon reaching Sungai Puyu again became hysterical; screaming, struggling, holding onto the steering wheel and begging him not to send him to the plaintiff's house. To avoid an accident, he had to return home. On 22 December 1997, he again managed to convince the minor to follow him into his car. He used another route to the plaintiff's house. However, upon reaching the exit of the highway to Permatang Pauh, towards Jalan Raja Uda, the minor questioned him and then attempted to jump out from the car. Hapless, he returned home. He had not denied the plaintiff of her custody and care of the minor. He tried several times to return the minor to the plaintiff. He failed to persuade the minor to return to the plaintiff. On 31 December 1997, he lodged a police report (encl. 129 - exh. SHL 1) that he had tried but failed on three occasions to return the minor to the plaintiff. He denied that the plaintiff had served the order of the Federal Court on him. The minor also lodged a police report (encl. 129 - exh. SHL 2) and wrote a few letters (SHL 3) expressing his utter disdain for the plaintiff. He sought the assistance of the Welfare Department, Bukit Mertajam. However, the welfare department, because of the order of the Federal Court, was not able to help him. The welfare department advised him to apply to court for the interim custody and care of the minor. Never had he disregarded the order dated 11 March 1996 nor denied the plaintiff of her rights. But the minor refused to return to the plaintiff. He had not disobeyed the order dated 11 March 1996. He had not detained the minor. He was ever willing to give full cooperation to ensure his compliance with the order of court. Unfortunately, he could not convince nor persuade the minor to return to the plaintiff. Because of that, he scolded the minor on a number of occasions. Instead, the minor shouted back at him to return in his stead to the plaintiff. He was afraid, if he kept on forcing the minor to return to the plaintiff, that the minor would run away from his or the plaintiff's house or commit an unlawful act, as the minor had said on a number of occasions that death would be better than to return to the plaintiff. He was advised that he was not disobeying the order of court and that non-compliance was due to the refusal of the minor to return to the plaintiff. Pending the retrial, a neutral party, and the defendant proposed his mother, should be looking after the minor. The defendant asked for the plaintiff's motion to be dismissed with costs.

Mr Tung Eng Keong, for the plaintiff, submitted essentially what his client deposed. However, he also raised, if true, a disturbing fact. Mr Tung asserted that the plaintiff was not given the right by the defendant to see the minor, that the plaintiff had not seen the minor since 24 November 1997 and that

the defendant refused, on 18 December 1997, to hand the minor, whose voice in the defendant's house Mr Tung said he personally heard, to the plaintiff.

Mr Haniff, who undoubtedly heard what Mr Tung alleged in submission, replied on behalf of the defendant that the defendant would surrender the minor, on 23 May 1998, to the plaintiff. He contended that the defendant who endeavored and made several attempts to return the minor had no intention of disobeying the order dated 11 March 1997. That, Mr Haniff added, should be taken as a mitigating factor. The minor who was with the defendant for the first seven years was only with the plaintiff for the last two years. The minor would have been closer to the defendant than the plaintiff. It is probable that the minor did not want to return to the plaintiff. Conceding that the defendant had not complied with the order dated 11 March 1997, Mr Haniff submitted that the defendant could not avoid the non-compliance and that contempt was technical.

In law, "it is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even *void*" (*Hadkinson v. Hadkinson* [1952] P 285 @ 288 per Romer LJ). "It is a civil contempt of court to refuse or neglect to do an act required by a judgment or order of the court within the time specified in the judgment or order, or to disobey a judgment or order requiring a person to abstain from doing a specified act, or to act in breach of an undertaking given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction" (*Halsbury's Laws of England* 4th edn. vol. 9 para. 52). "The two major sanctions which the court can impose upon persons who have committed contempt by not obeying court orders or judgments are sequestration and committal" (Borrie & Lowe, The Law of Contempt 3rd edn. p. 603; also see O. 45 r. 5 of the Rules of the High Court 1980). The underlying object is that a court must have the means of enforcing its own orders.

In *Canadian Metal Co. Ltd v. Canadian Broadcasting Corpn* (No. 2) [1975] 48 DLR (3rd) 641 @ 669 Ont), O'Leary J put it thus:

> To allow court orders to be disobeyed would be to thread the road to anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn ... If the remedies that the court grant to correct ... wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result in the destruction of our society.

The motive for disobedience is irrelevant for the purpose of establishing a case of contempt *R v. Poplar Borough Council* (No. 2) [1922] 1 KB 95 2 103). But the breach must be proved beyond all reasonable doubt (*Re; Bramblevale Ltd* [1970] Ch 128). "In most cases, this will mean that the offender will have been shown to have deliberately or wilfully disobeyed the court order" (Borrie & Lowe, ibid p. 558). "Although contempt may be committed in the absence of willful disobedience, committal ... will not be ordered unless the contempt involves a degree of fault or misconduct" (*Halsbury's* ibid para. 53).

In the instant case, the order of 11 March 1996 undoubtedly required the defendant, after each weekend access, to return the minor to the plaintiff.

It is not in dispute that the defendant took the minor from the plaintiff, on 21 November 1997, but did not return the minor to the plaintiff, on 24 November 1997 and thereafter. *Prima facie*, the defendant had not obeyed the order dated 11 March 1996.

But what is the defendant's explanation for his failure to return the minor to the plaintiff, on 24 November 1997 and even thereafter? Curiously, the defendant put all blame on the minor, who was just ten years old at the material time. The defendant related that he did not return the minor to the plaintiff, on 24 November 1997, as the minor was adamant on not returning to the plaintiff. The defendant asserted that the minor became hysterical when he (defendant) informed the minor of his (defendant) intention to return him (minor) to the plaintiff. The defendant said he tried but failed to persuade the minor to return to the plaintiff; the minor telephoned and informed the plaintiff, on 1 December 1997, that he (minor) would not return to the plaintiff. The minor also telephoned and informed the plaintiff's solicitors and the OCPD Butterworth that he (minor) would not return to the plaintiff. The defendant also related how he coaxed the minor into his car and how he tried (on 28 November 1997, 9 December 1997 and 22 December 1997) to drive the minor to the plaintiff's house. On each of those occasions, the defendant said, he failed to drive the minor to the plaintiff's house, as the minor became hysterical as his car was approaching the plaintiff's house and that he had to return home, by reason of the minor's hysterics, to avoid an accident.

The defendant also asserted, that he had not denied the plaintiff of her custody and care of the minor, that he had not disobeyed the order dated 11 March 1996 and that he had not detained the minor. It was just that the minor refused to return to the plaintiff. He was ever willing to give full cooperation to ensure his compliance with the order of court. Unfortunately, he could not convince nor persuade the minor to return to the plaintiff. He was afraid, if he kept on forcing the minor to return to the plaintiff, that the minor would run away from his or the plaintiff's house or commit an unlawful act, as the minor had

said on a number of occasions that death would be better than to return to the plaintiff. The defendant said he was advised that he was not disobeying the order of court and that non-compliance was due to the refusal of the minor to return to the plaintiff. The defendant also deposed that he reported, on 31 December 1997, to the police (encl. 129 - exhb. SHL 1) that he had tried but failed on three occasions to return the minor to the plaintiff. The defendant denied that the plaintiff had served the order of the Federal Court on him. The defendant also exhibited the minor's police report (encl. 129 - exhb. SHL 2) and the minor's letters (SHL 3) expressing his whishes not to return to the plaintiff.

Nonetheless, it is observed, that despite so much said by the defendant on the minor's refusal to return to the plaintiff, that the defendant had not said a word on his failure to respond to the written demands of the plaintiff to return the minor to her. Also, the defendant had said not a word on his inexplicable failure to hand the minor to the plaintiff or offer to hand the minor to the plaintiff, on 18 December 1997, when the plaintiff was in his house and when it was most convenient and expedient then for the defendant, if the defendant was at all sincere in his intention to hand the minor to the plaintiff, to hand the minor to the plaintiff - without the trouble then of having to coax and to drive the minor to the plaintiff's house.

Instead, the defendant dwelled at length on the minor's refusal to return to the plaintiff and on the minor's hysterics and antics inside the car, neither matters, most conveniently for the defendant, which the plaintiff could affirm or deny. Yet, it could not be asked, was there any logical reason for the defendant to have kept as a secret his "attempts" to return the minor, even as he was continually demanded of to return the minor, until the very last moment, until he was summoned to answer to a motion to commit him? But why would the defendant not inform the plaintiff that he had attempted to return the minor - a logical and legitimate response to the plaintiff's demands? Or were those "attempts" an afterthought? But if those attempts were not an afterthought, would it not have been rudimentary as well as sensible and logical for the defendant as a reasonable man, if the defendant intended and had attempted to return the minor, to have informed the plaintiff and or the plaintiff's solicitors of his several attempts to return the minor and or also to have advised the plaintiff to take the minor from his house? Alternatively, would it have been that difficult for the defendant, or was it too much to be expected of him, to have informed the court, if indeed he could not return the minor, though he tried and tried again, of his inability against his will to comply with the order of 11 March 1996? But reasonably, the fact that the defendant had not informed the plaintiff of his "attempts" to return the minor and had not invited the plaintiff to take the minor from him, at any one time

during the six months that the minor was with him, is not consistent with any intention to return the minor to the plaintiff. The fact that the defendant had totally ignored the plaintiff's several demands is also inconsistent with any intention to return the minor to the plaintiff. Rather, on the material before the court, the conduct of the defendant, which is inconsistent with intention to return the minor, is on the other hand consistent with the defendant's refusal, his stubborn refusal, to hand the minor to the plaintiff. For contrary to the asserted intention of the defendant, the external conduct of the defendant, *acta exteriora indicant interiora secreta,* expressed that the defendant could not have had an intention to return the minor to the plaintiff. Otherwise, almost certainly, the defendant would have exhibited some conduct, and he exhibited no such conduct, consistent with intention to return the minor.

Fairly said, the defendant only exhibited conduct that expressed that the defendant was doing all that he could to avoid him giving the minor to the plaintiff. He ignored the legitimate demands to him to return the minor. He remained completely silent, whereas he should have responded to the plaintiff and whereas he could and should have related the difficulties he encounted, if true, to the plaintiff. He sought the assistance of the Welfare Department rather than the assistance of the plaintiff and or the plaintiff's solicitors or his own solicitors. The defendant was advised by the Welfare Department, according to the defendant, to apply to court for the interim custody and care of the minor. Then, the defendant was advised, by his own admission, to seek the judicial process to overcome the problems he encountered, if true, in complying with the order of court. But he did not seek the judicial process. He would rather report to the police, as if the plaintiff would get to know his report, of his attempts to return the minor. Or was that report lodged to evidence? The fact that the defendant had lodged a report on his attempts to return the minor could not be denied. However, the asserted fact that the defendant attempted to return the minor, in the light of his external conduct, must be seriously doubted. The external conduct of the defendant manifested only that the defendant was recalcitrant and that the defendant was unaffected by the legitimate demands of the plaintiff to return the minor to her, even though the plaintiff had the law behind her and even though the plaintiff would be effectively denied her legal rights. Put bluntly, the defendant could not be believed.

The contempt was not technical, as suggested by Mr Haniff. The minor of ten years could not have been that astute or that wily as to have telephoned the plaintiff's solicitors and the OCPD Butterworth without the defendant behind, goading and prodding him. Clearly, the disobedience of the order was premeditated. And the disobedience has been proved beyond all reasonable doubt. Undoubtedly, the defendant is guilty of contempt of court. Mr Haniff

assured the court that the disobedience would not be repeated. Also belatedly, the defendant had surrendered the minor to the plaintiff, at 11.40am on 23 May 1998. Still, the rights of the plaintiff had been seriously transgressed, for she was cruelly denied the comfort of her child for six months, and the order of court had been arrogantly defied. The defendant could not be set free unpunished. Accordingly, the defendant, a poultry businessman, is ordered to pay a fine of RM20,000.